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EXAMINER

PARSLEY, DAVID J

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 02/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/913,317

Applicant(s)

ZENTI, MAXIMILIANO

Examiner

David J Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 43-80 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 43-80 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 November 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

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Detailed Action

Amendment

1. This office action is in response to applicant's amendment (paper no. 9) filed 7-23-03 and this action is non-final.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 43-80 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 43 and 62 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "particularly" in line 2 is indefinite in that it is unclear to what other types of plant cultivations are part of the claimed invention. Further, it is unclear to how the sod is not brittle, or what component of the invention is to maintain the geometric shape and how the shape allows for proper handling. Further it is unclear to after which step the regular watering is to occur.

Claims 44-61 depend from rejected claim 43 and include all of the limitations of claim 43 thereby rendering these dependent claims indefinite.

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Claims 44 and 63 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "preferably" in line 3 of both claims is indefinite, in that it is unclear to what other types of packaging applicant is claiming as the invention.

Claims 63-80 depend from rejected claim 62 and include all of the limitations of claim 62 thereby rendering these dependent claims indefinite.

Claim 64 recites the limitation "said layer of glue" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 62, 64-65, 69 and 73 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,834,072 to Rack.

Referring to claim 62, Rack discloses a method of preparing a plant cultivation, comprising, preparing a seeding bed – see figure 5, and introducing seeds therein – see column 4 line 68, dividing the seeding bed into sods, cohesion treatment allowing for the sod to maintain a geometric shape – see figure 5, laying the sod and moistening the sod before or after laying with regular watering afterwards, a nondestructive drying step performed on the sod, wherein the

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cohesion treatment includes the sod being mixed with a bonding agent in a chamber – see for example columns 1-6.

Referring to claim 64, Rack discloses the preparation of the seeding bed comprises dosage of the seeds and the layer of glue and the mixing thereof – see figure 5 and columns 4-6.

Referring to claim 65, Rack further discloses the preparation of a seeding bed is obtained by depositing successive layers of various components – see figure 5.

Referring to claim 69, Rack discloses the introduction of seeds occurs by depositing a layer of seeds – see for example figure 5 and column 4 line 68.

Referring to claim 73, Rack discloses a sod for cultivating plants, comprising a seeded seeding bed – see figure 5, including a fertilizer and wrapped or at least held together by a suitable organic bonding agent so as to maintain its shape – see columns 2-6.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 43, 45-46, 50-51, and 53-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,584,790 to Gaughen in view of Rack.

Referring to claim 43, Gaughen discloses a method of preparing a plant cultivation, particularly a lawn, comprising, also in a different time sequence, the following operating steps:

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preparing a seeding bed and introducing seeds therein – see figure 1 and column 2 lines 55-65 and column 3 lines 35-49, dividing the seeding bed into sods – 18, cohesion treatment whereby the resulting sod is not brittle makes it possible to maintain a geometric shape and allows proper handling until the laying step is completed – see figure 1 and column 2 lines 55-65 and column 3 lines 35-49, laying the sod – 19, moistening the sod before or after laying and regular watering afterwards – see column 3 lines 32-35 and column 5 lines 61-68 and column 6 lines 1-2, and the cohesion treatment is performed by laying a layer of adhesive on the outer surface of the sod, the adhesive being a natural adhesive - see for example column 2 lines 55-65 and columns 3-5.

Gaughen does not disclose laying a layer of adhesive directly on the entire outer surface of the sod. Rack does disclose laying a layer of adhesive directly on the entire outer surface of the sod – see for example columns 1-5. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Gaughen and add the laying of the adhesive directly over the entire surface of the sod of Rack, so as to allow for the components comprising the sod to be securely held together.

Referring to claim 45, Gaughen as modified Rack further discloses the preparation of the seeding bed comprises dosage of the seeds and the layer of glue and the mixing thereof – see figure 5 and columns 4-6 of Rack.

Referring to claims 46, Gaughen as modified by Rack further discloses the preparation of a seeding bed is obtained by depositing successive layers of various components – see figures 1-7 and column 3 lines 60-68, column 4 lines 1-68 and column 5 lines 1-68 of Gaughen.

Referring to claim 50, Gaughen as modified by Rack further discloses the introduction of seeds is carried out by depositing a layer of seeds – see column 3 lines 35-49 of Gaughen.

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Referring to claim 51, Gaughen as modified by Rack further discloses the drying is nondestructive and reduces the percentage of humidity in the seeding bed to the point at which seed germination is no longer possible and tends to preserve the possibility of rapid future revival of microorganisms activity without degrading the natural and chemical organic substances present in the seeding bed – see column 3 lines 50-53 and column 5 lines 31-48 of Gaughen.

Referring to claim 53, Gaughen as modified by Rack further discloses the drying is provided by means of low-temperature heat sources and by air change – see column 5 lines 31-48 of Gaughen.

Referring to claim 54, Gaughen as modified by Rack further discloses a sod for cultivating plants, comprising a seeded seeding bed – 100 including a fertilizer – see column 2 lines 55-68 and column 6 lines 9-23 and wrapped or at least held together by a suitable organic bonding agent so as to maintain its shape – see column 3 lines 35-49, column 5 lines 10-24, and column 24-32 of Gaughen.

Claims 44, 47, 49, 63, 66 and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gaughen and Gaughen as modified by Kazemzadeh as applied to claims 43 and 62 above, and further in view of U.S. Patent No. 4,786,550 to McFarland et al.

Referring to claims 44 and 63, Rack and Gaughen as modified by Rack do not disclose wherein after drying the sod is packaged in a suitable package for its preservation, storage, and transport, preferably under vacuum. McFarland et al. does disclose wherein after drying the sod is packaged in a suitable package for its preservation, storage, and transport, preferably under vacuum – see column 4 lines 13-17 and column 6 lines 59-63. Therefore it would have been

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obvious to one of ordinary skill in the art to take the method of preparing a seeding bed of Rack and Gaughen as modified by Rack and add the packaging the sod in a package for storage and transport of McFarland et al., so as to make the method profitable in that the sod can be shipped and sold since it is packaged for transport.

Referring to claims 47 and 66, Rack and Gaughen as modified by Rack do not disclose wherein the division into sods occurs by molding the mix in a template, die or by extrusion in the chosen sod shape. McFarland et al. does disclose wherein the division into sods occurs by molding the mix by extrusion in the chosen sod shape – see figures 1-10 and column 3 lines 53-68 and column 4 lines 1-17. Therefore it would have been obvious to one of ordinary skill in the art to take the method of preparing a seeding bed of Rack and Gaughen as modified by Rack and add the step of dividing into sods occurring by extrusion in the chosen sod shape of McFarland et al., so as to ensure that the sod maintains the desired shape in that the process is automated and easily controllable.

Referring to claims 49 and 68, Rack and Gaughen as modified by Rack do not disclose wherein the introduction of seeds is carried out by implantation of a seeding machine. McFarland et al. does disclose wherein the introduction of seeds is carried out by implantation of a seeding machine – 62,64,66 – see figures 1-10 and column 3 lines 53-68. Therefore it would have been obvious to one of ordinary skill in the art to take the method of preparing a seeding bed of Rack and Gaughen as modified by Rack and add the introduction of seeds by a seeding machine of McFarland et al., so as to make the process quicker and more efficient in that the laying of seeds is automated and thus allows for quicker laying of the seeds and for more seeds to be placed on the sod.

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Claims 48 and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rack and Gaughen as modified by Rack as applied to claims 43 and 62 above, and further in view of U.S. Patent No. 4,063,385 to Friedberg. Rack and Gaughen as modified by Rack do not disclose wherein the division into sods occurs by die-cutting. Friedberg does disclose the division of sods occurs by die-cutting – see figures 1-2 and column 2 lines 1-68 and column 3 lines 1-16. Therefore it would have been obvious to one of ordinary skill in the art to take the method of preparing a seeding bed of Rack and Gaughen as modified by Rack and add the division into sods by die-cutting of Friedberg, so as to make the cutting operation quicker and easier since it is automated, therefore making the process more efficient.

Claims 52 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rack as modified by Gaughen and Gaughen as modified by Rack as applied to claims 51 and 70, and further in view of U.S. Patent No. 4,109,395 to Huang. Rack as modified by Gaughen and Gaughen as modified by Rack do not disclose wherein the drying is performed by exposure in a ventilated greenhouse. Huang does disclose wherein the drying is performed by exposure in a ventilated greenhouse – see figures 1-4 and columns 2-4. Therefore it would have been obvious to one of ordinary skill in the art to take the method of preparing a seeding bed of Rack as modified by Gaughen and Gaughen as modified by Rack and add the drying step performed in a ventilated greenhouse of Huang, so as to protect the sod during the process in that inside the greenhouse the sod is protected from any outside elements that could cause it harm.

Claims 70 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rack as applied to claim 62 above, and further in view of Gaughen.

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Referring to claim 70, Rack does not disclose the drying reduces the percentage of humidity in the seeding bed to the point at which seed germination is no longer possible and tends to preserve the possibility of rapid future revival of microorganisms activity without degrading the natural and chemical organic substances present in the seeding bed. Gaughen does disclose the drying is nondestructive and reduces the percentage of humidity in the seeding bed to the point at which seed germination is no longer possible and tends to preserve the possibility of rapid future revival of microorganisms activity without degrading the natural and chemical organic substances present in the seeding bed – see column 3 lines 50-53 and column 5 lines 31-48. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Rack and add the nondestructive drying of Gaughen, so as to allow for the device to be stronger and more durable over time.

Referring to claim 72, Rack as modified by Gaughen further discloses the drying is provided by means of low-temperature heat sources and by air change – see column 5 lines 31-48 of Gaughen.

Claims 55-56 and 74-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rack and Gaughen as modified by Rack as applied to claims 54 and 73 above, and further in view of U.S. Patent No. 6,088,957 to Kazemzadeh.

Referring to claims 55 and 74, Rack and Gaughen as modified by Rack do not disclose wherein the bonding agent is biodegradable. Kazemzadeh does disclose the bonding agent is biodegradable – see column 4 lines 28-59. Therefore it would have been obvious to one of ordinary skill in the art to take the method of preparing a seeding bed of Rack and Gaughen as modified by Rack and add the bonding agent being biodegradable of Kazemzadeh, so as to make

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the process more efficient in that after the sod is placed on the ground, the bonding agent degrades and thus does not prevent water from reaching the seeds, thus making the process more effective and efficient.

Referring to claims 56 and 75, Rack and Gaughen as modified by Rack do not disclose the bonding agent comprises at least one colloidal substance. Kazemzadeh does disclose the bonding agent comprises at least one colloidal substance – see column 4 lines 28-59 of. Therefore it would have been obvious to one of ordinary skill in the art to take the method of preparing a seeding bed of Rack and Gaughen as modified by Rack and add the bonding agent comprising at least one colloidal substance of Kazemzadeh, so as to make the process more efficient in that after the sod is placed on the ground, the bonding agent degrades and thus does not prevent water from reaching the seeds, thus making the process more effective and efficient.

Claims 57-59 and 76-78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rack as modified by Kazemzadeh or Gaughen as modified by Rack and Kazemzadeh as applied to claims 56 and 75 above, and further in view of U.S. Patent No. 4,414,776 to Ball.

Referring to claims 57 and 76, Rack as modified by Kazemzadeh or Gaughen as modified by Rack and Kazemzadeh do not disclose the bonding agent comprises glue of vegetable or animal origin. Ball does disclose the bonding agent comprises glue of vegetable or animal origin – see column 2 lines 60-68. Therefore it would have been obvious to one of ordinary skill in the art to take the method of preparing a seeding bed of Rack as modified by Kazemzadeh or Gaughen as modified by Rack and Kazemzadeh and add the bonding agent comprising glue of animal or vegetable origin of Ball, so as to make the process more efficient in that after the sod is

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placed on the ground, the bonding agent degrades and thus does not prevent water from reaching the seeds, thus making the process more effective and efficient.

Referring to claims 58 and 77, Rack as modified by Kazemzadeh and Ball or Gaughen as modified by Rack and Kazemzadeh and Ball further discloses the seeding bed comprises soil, which includes mineral substances and at least one organic substance – see column 6 lines 9-23 of Gaughen and columns 3-6 of Rack.

Referring to claims 59 and 78, Rack as modified by Kazemzadeh and Ball or Gaughen as modified by Rack and Kazemzadeh and Ball further discloses the organic substance comprises one or more fertilizers – see column 6 lines 9-23 of Gaughen and columns 3-6 of Rack.

Claims 60-61 and 79-80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rack as modified by Kazemzadeh and Ball and Gaughen as modified by Rack, Kazemzadeh and Ball as applied to claims 59 and 78 above, and further in view of McFarland et al.

Referring to claims 60 and 79, Rack as modified by Kazemzadeh and Ball and Gaughen as modified by Rack, Kazemzadeh and Ball do not disclose the sod comprising at least one selective herbicide, which hinders the germination and growth of plants which are different from and antagonists of those whose growth is sought. McFarland et al. does disclose the sod comprising at least one selective herbicide which hinders the germination and growth of plants which are different from and antagonists of those whose growth is sought – see column 3 lines 19-23 and column 6 lines 43-52. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Rack as modified by Kazemzadeh and Ball and Gaughen as modified by Rack, Kazemzadeh and Ball and add the herbicide of McFarland et al., so as to make the

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device more effective in that the sod can grow without being limited or harmed by other types of plants growing in the sod.

Referring to claims 61 and 80 Rack as modified by Kazemzadeh, Ball and McFarland and Gaughen as modified by Rack, Kazemzadeh Ball and McFarland et al. further discloses the sod having a geometric shape which makes it possible to cover continuously the surface to be revegetated – see column 2 lines 66-68 and column 3 lines 54-59 of Gaughen and figure 5 of Rack which shows the sod covers the surface to be revegetated and it is inherent that the sod has a geometric shape since that is necessary for the sod to continuously cover the surface to be revegetated.

Response to Arguments

5. Applicant's arguments with respect to claims 43-80 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendments to the independent claims 43 and 62 overcome the rejections in the previous office action (paper no. 7), however the claims are still rendered rejected given the new grounds of rejection stated above in paragraphs 3-4.

Conclusion

6. Any inquiry concerning this communication from the examiner should be directed to David Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on Monday-Friday from 7:30 am to 5:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574.

A handwritten signature in black ink, appearing to read "Peter M. Poon". The signature is stylized with a large initial "P" and a long horizontal stroke at the end.

Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600